

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2880**

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**Introduced by Assembly Member Wolk  
(Coauthor: Assembly Member Galgiani)**

February 22, 2008

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An act to amend Section 10156.8 of, and to add Sections 10133.25 and 10150.1 to, the Business and Professions Code, ~~and to amend Sections 22103, 22104, 22112, 50121, and 50205 of, and to add Sections 22004.5, 22168, 50003.5, and 50513 to, the Financial Code,~~ relating to mortgage lending.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2880, as amended, Wolk. Mortgage lending.

Existing law provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner. ~~Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. Existing law requires these licensees a real estate broker to pay specified licensing fees to, and requires finance lenders and residential mortgage lenders and servicers to maintain specified surety bonds with, their regulators the commissioner.~~ A willful violation of the law regulating ~~these licensees~~ *real estate brokers* is a crime.

This bill would require a real estate broker who makes, arranges, or services loans secured by real property to maintain a surety bond with the commissioner, as specified. The bill would provide that a mortgage

broker, as defined, who provides brokerage services to a borrower is the fiduciary of the borrower. The bill would create various duties that these mortgage brokers would be required to satisfy when making, arranging, or servicing consumer loans, as defined. The bill would prohibit mortgage brokers from receiving compensation for placing a borrower in a consumer loan that is more costly than that for which the borrower qualifies, *except as specified*. The bill would prohibit a mortgage broker from, for a one-year period after consummation of a consumer loan that the broker negotiated or arranged, engaging in direct marketing with the borrower regarding refinancing the loan, as specified. The bill would make a mortgage broker who violates these provisions civilly liable to the borrower for damages and would authorize the court to award punitive damages to the borrower. Because a willful violation of these provisions by a real estate broker, ~~a broker under the Finance Lenders Law, or a residential mortgage lender~~ would be a crime, this bill would impose a state-mandated local program.

~~The bill would also increase the amounts of certain of the fees that finance lenders and residential mortgage lenders are required to pay to, and the amounts of the surety bonds mortgage brokers, as defined, are required to maintain with their regulators, and the amount of net worth that must be maintained by a finance lender.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10133.25 is added to the Business and
- 2 Professions Code, to read:
- 3 10133.25. (a) For purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Mortgage broker" means a real estate broker who acts
- 6 pursuant to Section 10131.1 or subdivision (d) of Section 10131,
- 7 and who makes, arranges, or services consumer loans.
- 8 (2) "Consumer loan" has the meaning set forth in Section 4970
- 9 of the Financial Code.

1 (b) A mortgage broker who provides brokerage services to a  
2 borrower is the fiduciary of the borrower, and any violation of the  
3 person's fiduciary duties shall be a violation of this section. A  
4 mortgage broker who arranges a consumer loan owes this fiduciary  
5 duty to the borrower regardless of whether the mortgage broker  
6 may be acting for anyone else as an agent in the course of the loan  
7 transaction.

8 (c) In addition to duties imposed by other statutes or at common  
9 law, a mortgage broker shall comply with all of the following  
10 duties, which may not be waived by the borrower or modified by  
11 the mortgage broker:

12 (1) A mortgage broker shall act in the borrower's best interest  
13 and in the utmost good faith toward the borrower and shall not  
14 compromise a borrower's right or interest in favor of another's  
15 right or interest, including, but not limited to, a right or interest of  
16 the mortgage broker.

17 (2) A mortgage broker shall safeguard and account for any  
18 money handled for the borrower.

19 (3) A mortgage broker shall follow reasonable and lawful  
20 instructions from the borrower.

21 (4) A mortgage broker shall use reasonable skill, care, and  
22 diligence.

23 (5) A mortgage broker shall clearly disclose to the borrower, in  
24 a timely fashion, all material information that might reasonably  
25 affect the borrower's rights, interests, or ability to receive the  
26 borrower's intended benefit from the consumer loan, including,  
27 but not limited to, total compensation the mortgage broker would  
28 receive from any of the loan options the mortgage broker presents  
29 to the borrower.

30 (6) A mortgage broker shall make reasonable efforts to secure  
31 a loan that is in the best interests of the borrower considering all  
32 the circumstances, including, but not limited to, the product type,  
33 rates, charges, and repayment terms of the consumer loan.

34 (7) A mortgage broker shall not make or cause to be made,  
35 directly or indirectly, any false, deceptive, or misleading statement,  
36 representation, or omission in connection with a consumer loan.

37 (8) A mortgage broker shall not accept, give, or charge any  
38 undisclosed compensation or realize any undisclosed remuneration,  
39 whether through direct or indirect means, that inures to the benefit  
40 of the mortgage broker on an expenditure made for the borrower.

(d) ~~(1)~~—A mortgage broker shall not steer, counsel, or direct a borrower to a consumer loan with rates, charges, principal amount, or prepayment terms that are more costly than that for which the borrower qualifies.

~~(2) If unable to suggest, offer, or recommend to a borrower a consumer loan that is not more expensive than that for which the consumer qualifies, a mortgage broker shall disclose both of the following to the consumer:~~

~~(A) That the lenders with whom the mortgage broker has a business relationship do not offer a consumer loan that is not more expensive than that for which the borrower qualifies, but that other creditors may offer such a loan.~~

~~(B) The reasons that the products and services offered by the lenders with whom the mortgage broker has a business relationship are not available to, or reasonably advantageous for, the borrower.~~

(e) (1) A mortgage broker shall not receive, directly or indirectly, any compensation for placing a borrower in a consumer loan that is more costly than that for which the borrower qualifies, or that is based on, or varies with, the terms of any home mortgage loan, other than the amount of loan principal.

(2) Notwithstanding paragraph (1), in a consumer loan other than a high-cost loan, a subprime loan, or a nontraditional loan, a mortgage broker may receive compensation in the form of an increased rate not to exceed ~~100~~ 200 basis points above the par rate for which the borrower qualifies, provided all of the following are satisfied:

(A) The mortgage broker receives no other compensation, however denominated, directly or indirectly, from the borrower, creditor, or other mortgage originator.

(B) The loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated.

(C) The loan does not include a prepayment penalty.

(D) There are no other closing costs associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.

(f) For a period of one year from the consummation of a consumer loan that was negotiated or arranged by a mortgage broker, that mortgage broker shall not engage in direct marketing or initiate any communication with the borrower regarding

1 refinancing of that consumer loan. “Direct marketing” and  
2 “communication” shall include any communication directed at a  
3 specific person without the use of intervening media, including,  
4 but not limited to, the following methods: telephone, electronic  
5 mail, United States mail or other form of courier service, and  
6 in-person communication. This subdivision shall not restrict a  
7 broker from responding to specific customer inquiries regarding  
8 refinancing.

9 (g) A mortgage broker who fails to comply with the provisions  
10 of this section shall be civilly liable to the consumer in an amount  
11 equal to any actual damages suffered by the consumer, plus  
12 attorneys fees and costs. A court may, in addition to any other  
13 remedy, award punitive damages to the consumer upon a finding  
14 that damages are warranted pursuant to Section 3294 of the Civil  
15 Code.

16 (h) The duties, rights, and remedies provided in this section are  
17 cumulative and in addition to any other duties, rights, and remedies  
18 provided by law.

19 SEC. 2. Section 10150.1 is added to the Business and  
20 Professions Code, to read:

21 10150.1. (a) Any real estate broker who acts pursuant to  
22 Section 10131.1 or subdivision (d) or (e) of Section 10131, and  
23 who makes, arranges, or services loans secured by real property  
24 containing one to four residential units, shall maintain a surety  
25 bond in accordance with this section. The principal amount of the  
26 bond shall be in an amount and form prescribed by regulations of  
27 the commissioner. The regulations shall provide for a varying bond  
28 amount based upon a licensee’s volume of business as a real estate  
29 broker that negotiates loans as a mortgage broker and any other  
30 relevant factors as determined by the commissioner, but in no case  
31 shall the bond be less than one hundred thousand dollars (\$100,000)  
32 nor more than five hundred thousand dollars (\$500,000); provided,  
33 however, that upon a determination by the commissioner that the  
34 licensee is not in compliance with any provision of this chapter,  
35 or Division 1.6 (commencing with Section 4970) of the Financial  
36 Code, or any rule or order adopted or issued to implement or  
37 enforce any of these provisions, the commissioner may require the  
38 licensee to post a surety bond twice the amount of the bond as is  
39 required consistent with the regulations. The bond shall be payable  
40 to the commissioner and issued by an insurer authorized to do

1 business in this state. A copy of the bond, including any and all  
2 riders and endorsements executed subsequent to the effective date  
3 of the bond, shall be filed with the commissioner for review and  
4 approval prior to execution, and filed with the commissioner within  
5 10 days of execution. For licensees with multiple licensed  
6 locations, only one surety bond is required.

7 (b) The bond required under this section shall be used for the  
8 recovery of expenses, fines, and fees levied by the commissioner  
9 in accordance with this division or for losses or damages incurred  
10 by borrowers or consumers as the result of a licensee's  
11 noncompliance with the requirements of this chapter or Division  
12 1.6 (commencing with Section 4970) of the Financial Code.

13 SEC. 3. Section 10156.8 of the Business and Professions Code  
14 is amended to read:

15 10156.8. As one of the conditions to the issuance of a restricted  
16 license authorized by Section 10156.5 the commissioner may  
17 require the filing of surety bonds in such form and condition as he  
18 may require in respect to the restricted licensee for the protection  
19 of persons or classes of persons with whom said licensee may deal.  
20 With respect to a licensee who acts pursuant to Section 10131.1  
21 or subdivision (d) or (e) of Section 10131, and who makes,  
22 arranges, or services loans secured by real property containing one  
23 to four residential units, the commissioner shall require, as one of  
24 the conditions to the issuance of a restricted license, the filing of  
25 a surety bond in an amount no less than two hundred fifty thousand  
26 dollars (\$250,000).

27 ~~SEC. 4. Section 22004.5 is added to the Financial Code, to~~  
28 ~~read:~~

29 ~~22004.5. For purposes of this division, "mortgage broker"~~  
30 ~~means a licensee who engages in the business of negotiating~~  
31 ~~consumer loans, as defined in Section 4970, or who performs any~~  
32 ~~act as a negotiator in connection with those consumer loans made~~  
33 ~~by a finance lender licensed under this division.~~

34 ~~SEC. 5. Section 22103 of the Financial Code is amended to~~  
35 ~~read:~~

36 ~~22103. At the time of filing the application, the applicant shall~~  
37 ~~pay to the commissioner the sum of two hundred fifty dollars~~  
38 ~~(\$250) as a fee for investigating the application, plus the cost of~~  
39 ~~fingerprint processing and the criminal history record check under~~  
40 ~~Section 22101.5, and seven hundred fifty dollars (\$750) as an~~

1 application fee. The licensee shall also pay an annual renewal fee  
2 of six hundred dollars (\$600). The investigation fee, including the  
3 amount for the criminal history record check, and the application  
4 fee are not refundable if an application is denied or withdrawn.

5 SEC. 6. Section 22104 of the Financial Code is amended to  
6 read:

7 22104. The applicant shall file with the application financial  
8 statements prepared in accordance with generally accepted  
9 accounting principles and acceptable to the commissioner that  
10 indicate a net worth of at least fifty thousand dollars (\$50,000). A  
11 licensee shall maintain a net worth of at least fifty thousand dollars  
12 (\$50,000) at all times.

13 SEC. 7. Section 22112 of the Financial Code is amended to  
14 read:

15 22112. (a) A finance lender licensed under this division shall  
16 maintain a surety bond in accordance with this subdivision in the  
17 amount of twenty-five thousand dollars (\$25,000).

18 (b) A mortgage broker licensed under this division shall maintain  
19 a surety bond in an amount and form prescribed by regulations of  
20 the commissioner. The regulations shall provide for a varying bond  
21 amount based upon a licensee's volume of business and any other  
22 relevant factors as determined by the commissioner, but in no case  
23 shall the bond be less than one hundred thousand dollars (\$100,000)  
24 nor more than five hundred thousand dollars (\$500,000); provided,  
25 however, that upon a determination by the commissioner that the  
26 licensee is not in compliance with any provision of this division,  
27 or Division 1.6 (commencing with Section 4970), or any rule or  
28 order adopted or issued to implement or enforce any of these  
29 provisions, the commissioner may require the licensee to post a  
30 surety bond twice the amount of the bond as is required consistent  
31 with the regulations.

32 (c) The bonds required under subdivisions (a) and (b) shall be  
33 payable to the commissioner and issued by an insurer authorized  
34 to do business in this state. An original surety bond, including any  
35 and all riders and endorsements executed subsequent to the  
36 effective date of the bond, shall be filed with the commissioner  
37 within 10 days of execution. For licensees with multiple licensed  
38 locations, only one surety bond is required. The bond shall be used  
39 for the recovery of expenses, fines, and fees levied by the  
40 commissioner in accordance with this division or for losses or

1 damages incurred by borrowers or consumers as the result of a  
2 licensee's noncompliance with the requirements of this division,  
3 or Division 1.6 (commencing with Section 4970).

4 (d) ~~When an action is commenced on a licensee's bond, the~~  
5 ~~commissioner may require the filing of a new bond. Immediately~~  
6 ~~upon recovery of any action on the bond, the licensee shall file a~~  
7 ~~new bond. Failure to file a new bond within 10 days of the recovery~~  
8 ~~on a bond, or within 10 days after notification by the commissioner~~  
9 ~~that a new bond is required, constitutes sufficient grounds for the~~  
10 ~~suspension or revocation of the license.~~

11 SEC. 8. ~~Section 22168 is added to the Financial Code, to read:~~

12 ~~22168. (a) For purposes of this section, and notwithstanding~~  
13 ~~Section 22203, "consumer loan" has the meaning set forth in~~  
14 ~~Section 4970.~~

15 (b) ~~A mortgage broker who provides brokerage services to a~~  
16 ~~borrower in connection with a consumer loan is the fiduciary of~~  
17 ~~the borrower, and any violation of the person's fiduciary duties~~  
18 ~~shall be a violation of this section. A mortgage broker who arranges~~  
19 ~~a consumer loan owes this fiduciary duty to the borrower regardless~~  
20 ~~of whether the mortgage broker may be acting for anyone else as~~  
21 ~~an agent in the course of the loan transaction.~~

22 (c) ~~In addition to duties imposed by other statutes or at common~~  
23 ~~law, a mortgage broker shall comply with all of the following~~  
24 ~~duties, which may not be waived by the borrower or modified by~~  
25 ~~the mortgage broker:~~

26 (1) ~~A mortgage broker shall act in the borrower's best interest~~  
27 ~~and in the utmost good faith toward the borrower and shall not~~  
28 ~~compromise a borrower's right or interest in favor of another's~~  
29 ~~right or interest, including, but not limited, to a right or interest of~~  
30 ~~the mortgage broker.~~

31 (2) ~~A mortgage broker shall safeguard and account for any~~  
32 ~~money handled for the borrower.~~

33 (3) ~~A mortgage broker shall follow reasonable and lawful~~  
34 ~~instructions from the borrower.~~

35 (4) ~~A mortgage broker shall use reasonable skill, care, and~~  
36 ~~diligence.~~

37 (5) ~~A mortgage broker shall clearly disclose to the borrower, in~~  
38 ~~a timely fashion, all material information that might reasonably~~  
39 ~~affect the borrower's rights, interests, or ability to receive the~~  
40 ~~borrower's intended benefit from the consumer loan, including,~~



1 but not limited to, total compensation the mortgage broker would  
2 receive from any of the loan options the mortgage broker presents  
3 to the borrower.

4 (6) A mortgage broker shall make reasonable efforts to secure  
5 a loan that is in the best interests of the borrower considering all  
6 the circumstances, including, but not limited to, the product type,  
7 rates, charges, and repayment terms of the consumer loan.

8 (7) A mortgage broker shall not make or cause to be made,  
9 directly or indirectly, any false, deceptive, or misleading statement,  
10 representation, or omission in connection with a consumer loan.

11 (8) A mortgage broker shall not accept, give, or charge any  
12 undisclosed compensation or realize any undisclosed remuneration,  
13 whether through direct or indirect means, that inures to the benefit  
14 of the mortgage broker on an expenditure made for the borrower.

15 (d) (1) A mortgage broker shall not steer, counsel, or direct a  
16 borrower to a consumer loan with rates, charges, principal amount,  
17 or prepayment terms that are more costly than that for which the  
18 borrower qualifies.

19 (2) If unable to suggest, offer, or recommend to a borrower a  
20 consumer loan that is not more expensive than that for which the  
21 consumer qualifies, a mortgage broker shall disclose both of the  
22 following to the consumer:

23 (A) That the lenders with whom the mortgage broker has a  
24 business relationship do not offer a consumer loan that is not more  
25 expensive than that for which the borrower qualifies, but that other  
26 creditors may offer such a loan.

27 (B) The reasons that the products and services offered by the  
28 lenders with whom the mortgage broker has a business relationship  
29 are not available to, or reasonably advantageous for, the borrower.

30 (e) (1) A mortgage broker shall not receive, directly or  
31 indirectly, any compensation for placing a borrower in a consumer  
32 loan that is more costly than that for which the borrower qualifies;  
33 or that is based on, or varies with, the terms of any home mortgage  
34 loan, other than the amount of loan principal.

35 (2) Notwithstanding paragraph (1), in a consumer loan other  
36 than a high-cost loan, a subprime loan, or a nontraditional loan, a  
37 mortgage broker may receive compensation in the form of an  
38 increased rate not to exceed 100 basis points above the par rate  
39 for which the borrower qualifies, provided all of the following are  
40 satisfied:

1     ~~(A) The mortgage broker receives no other compensation,~~  
2     ~~however denominated, directly or indirectly, from the borrower,~~  
3     ~~creditor, or other mortgage originator.~~

4     ~~(B) The loan does not include discount points, origination points,~~  
5     ~~or rate reduction points, however denominated, or any payment~~  
6     ~~reduction fee, however denominated.~~

7     ~~(C) The loan does not include a prepayment penalty.~~

8     ~~(D) There are no other closing costs associated with the loan,~~  
9     ~~except for fees to government officials or amounts to fund escrow~~  
10    ~~accounts for taxes and insurance.~~

11    ~~(f) For a period of one year from the consummation of a~~  
12    ~~consumer loan that was negotiated or arranged by a mortgage~~  
13    ~~broker, that mortgage broker shall not engage in direct marketing~~  
14    ~~or initiate any communication with the borrower regarding~~  
15    ~~refinancing of that consumer loan. “Direct marketing” and~~  
16    ~~“communication” shall include any communication directed at a~~  
17    ~~specific person without the use of intervening media, including,~~  
18    ~~but not limited to, the following methods: telephone, electronic~~  
19    ~~mail, United States mail or other form of courier service, and~~  
20    ~~in-person communication. This subdivision shall not restrict a~~  
21    ~~mortgage broker from responding to specific customer inquiries~~  
22    ~~regarding refinancing.~~

23    ~~(g) A mortgage broker who fails to comply with the provisions~~  
24    ~~of this section shall be civilly liable to the consumer in an amount~~  
25    ~~equal to any actual damages suffered by the consumer, plus~~  
26    ~~attorneys fees and costs. A court may, in addition to any other~~  
27    ~~remedy, award punitive damages to the consumer upon a finding~~  
28    ~~that damages are warranted pursuant to Section 3294 of the Civil~~  
29    ~~Code.~~

30    ~~(h) The duties, rights, and remedies provided in this section are~~  
31    ~~cumulative and in addition to any other duties, rights, and remedies~~  
32    ~~provided by law.~~

33    ~~SEC. 9. Section 50003.5 is added to the Financial Code, to~~  
34    ~~read:~~

35    ~~50003.5. For purposes of this division, “mortgage broker”~~  
36    ~~means any licensee under this division who provides brokerage~~  
37    ~~services pursuant to Chapter 9 (commencing with Section 50700)~~  
38    ~~in connection with a consumer loan, as defined in Section 4970.~~

39    ~~SEC. 10. Section 50121 of the Financial Code is amended to~~  
40    ~~read:~~

1     ~~50121. The commissioner shall issue a license upon the~~  
2 ~~satisfaction of all of the following:~~

3     ~~(a) The filing with the commissioner of a complete and verified~~  
4 ~~application for licensure.~~

5     ~~(b) The filing as an exhibit to the application of a listing of~~  
6 ~~material judgments filed against, and bankruptcy petitions filed~~  
7 ~~by, the applicant for the preceding five years, and the disposition~~  
8 ~~thereof.~~

9     ~~(c) The payment of a nonrefundable investigation fee of two~~  
10 ~~hundred fifty dollars (\$250), plus the cost of fingerprint processing~~  
11 ~~and clearance, and an application filing fee of nine hundred dollars~~  
12 ~~(\$900).~~

13     ~~(d) An investigation of the statements required by Section 50124~~  
14 ~~based upon which the commissioner is able to issue findings that~~  
15 ~~the financial responsibility, criminal records (verified by~~  
16 ~~fingerprint, at the discretion of the commissioner), experience,~~  
17 ~~character, and general fitness of the applicant and of the partners~~  
18 ~~or members thereof, if the applicant is a partnership or association,~~  
19 ~~and of the principal officers and directors thereof, if the license~~  
20 ~~applicant is a corporation, support a finding that the business will~~  
21 ~~be operated honestly, fairly, and in accordance with the~~  
22 ~~requirements of this division.~~

23     ~~SEC. 11. Section 50205 of the Financial Code is amended to~~  
24 ~~read:~~

25     ~~50205. (a) A licensee shall maintain a surety bond in~~  
26 ~~accordance with this subdivision. The bond shall be used for the~~  
27 ~~recovery of expenses, fines, and fees levied by the commissioner~~  
28 ~~in accordance with this division or for losses or damages incurred~~  
29 ~~by borrowers or consumers as the result of a licensee's~~  
30 ~~noncompliance with the requirements of this division. Except as~~  
31 ~~specified in subdivision (b), the bond shall be payable when the~~  
32 ~~licensee fails to comply with a provision of this division and shall~~  
33 ~~be in the amount of fifty thousand dollars (\$50,000), and may be~~  
34 ~~increased by order of the commissioner to one hundred thousand~~  
35 ~~dollars (\$100,000) upon a determination by the commissioner that~~  
36 ~~the licensee is not in compliance with any provision of this chapter~~  
37 ~~or any rule or order adopted or issued by the commissioner to~~  
38 ~~implement or enforce provisions of this chapter.~~

39     ~~(b) A mortgage broker shall maintain a surety bond in an~~  
40 ~~amount prescribed by regulations of the commissioner. The~~

1 regulations shall provide for a varying bond amount based upon  
2 a licensee's volume of business and any other relevant factors as  
3 determined by the commissioner, but in no case shall the bond be  
4 less than one hundred thousand dollars (\$100,000) nor more than  
5 five hundred thousand dollars (\$500,000); provided, however, that  
6 upon a determination by the commissioner that the licensee is not  
7 in compliance with any provision of this division, or Division 1.6  
8 (commencing with Section 4970), or any rule or order adopted or  
9 issued to implement or enforce any of these provisions, the  
10 commissioner may require the licensee to post a surety bond twice  
11 the amount of the bond as is required consistent with the  
12 regulations.

13 (e) The bonds required under subdivisions (a) and (b) shall be  
14 payable to the commissioner and issued by an insurance company  
15 authorized to do business in this state. An original surety bond,  
16 including any and all riders and endorsements executed subsequent  
17 to the effective date of the bond, shall be filed with the  
18 commissioner within 10 days of its execution.

19 (d) When an action is commenced on a licensee's bond, the  
20 commissioner may require the filing of a new bond. Immediately  
21 upon the recovery of an action on the bond, the licensee shall file  
22 a new bond. Failure to file a new bond within 10 days of the  
23 recovery on a bond, or within 10 days after notification by the  
24 commissioner that a new bond is required, constitutes sufficient  
25 grounds for the suspension or revocation of the license.

26 SEC. 12. Section 50513 is added to the Financial Code, to read:

27 50513. (a) A mortgage broker who provides brokerage services  
28 to a borrower is the fiduciary of the borrower, and any violation  
29 of the person's fiduciary duties shall be a violation of this section.  
30 A mortgage broker who arranges a consumer loan owes this  
31 fiduciary duty to the borrower regardless of whether the mortgage  
32 broker may be acting for anyone else as an agent in the course of  
33 the loan transaction.

34 (b) In addition to duties imposed by other statutes or at common  
35 law, a mortgage broker shall comply with all of the following  
36 duties, which may not be waived by the borrower or modified by  
37 the mortgage broker:

38 (1) A mortgage broker shall act in the borrower's best interest  
39 and in the utmost good faith toward the borrower and shall not  
40 compromise a borrower's right or interest in favor of another's

1 right or interest, including, but not limited to, a right or interest of  
2 the mortgage broker.

3 ~~(2) A mortgage broker shall safeguard and account for any~~  
4 ~~money handled for the borrower.~~

5 ~~(3) A mortgage broker shall follow reasonable and lawful~~  
6 ~~instructions from the borrower.~~

7 ~~(4) A mortgage broker shall use reasonable skill, care, and~~  
8 ~~diligence.~~

9 ~~(5) A mortgage broker shall clearly disclose to the borrower, in~~  
10 ~~a timely fashion, all material information that might reasonably~~  
11 ~~affect the borrower's rights, interests, or ability to receive the~~  
12 ~~borrower's intended benefit from the consumer loan, including,~~  
13 ~~but not limited to, total compensation the mortgage broker would~~  
14 ~~receive from any of the loan options the mortgage broker presents~~  
15 ~~to the borrower.~~

16 ~~(6) A mortgage broker shall make reasonable efforts to secure~~  
17 ~~a loan that is in the best interests of the borrower considering all~~  
18 ~~the circumstances, including, but not limited to, the product type,~~  
19 ~~rates, charges, and repayment terms of the consumer loan.~~

20 ~~(7) A mortgage broker shall not make or cause to be made,~~  
21 ~~directly or indirectly, any false, deceptive, or misleading statement,~~  
22 ~~representation, or omission in connection with a consumer loan.~~

23 ~~(8) A mortgage broker shall not accept, give, or charge any~~  
24 ~~undisclosed compensation or realize any undisclosed remuneration,~~  
25 ~~whether through direct or indirect means, that inures to the benefit~~  
26 ~~of the mortgage broker on an expenditure made for the borrower.~~

27 ~~(e) (1) A mortgage broker shall not steer, counsel, or direct a~~  
28 ~~borrower to a consumer loan with rates, charges, principal amount,~~  
29 ~~or prepayment terms that are more costly than that for which the~~  
30 ~~borrower qualifies.~~

31 ~~(2) If unable to suggest, offer, or recommend to a borrower a~~  
32 ~~consumer loan that is not more expensive than that for which the~~  
33 ~~consumer qualifies, a mortgage broker shall disclose both of the~~  
34 ~~following to the consumer:~~

35 ~~(A) That the lenders with whom the mortgage broker has a~~  
36 ~~business relationship do not offer a consumer loan that is not more~~  
37 ~~expensive than that for which the borrower qualifies, but that other~~  
38 ~~creditors may offer such a loan.~~

~~(B) The reasons that the products and services offered by the lenders with whom the mortgage broker has a business relationship are not available to, or reasonably advantageous for, the borrower.~~

~~(d) (1) A mortgage broker shall not receive, directly or indirectly, any compensation for placing a borrower in a consumer loan that is more costly than that for which the borrower qualifies, or that is based on, or varies with, the terms of any home mortgage loan, other than the amount of loan principal.~~

~~(2) Notwithstanding paragraph (1), in a consumer loan other than a high-cost loan, a subprime loan, or a nontraditional loan, a mortgage broker may receive compensation in the form of an increased rate not to exceed 100 basis points above the par rate for which the borrower qualifies, provided all of the following are satisfied:~~

~~(A) The mortgage broker receives no other compensation, however denominated, directly or indirectly, from the borrower, creditor, or other mortgage originator.~~

~~(B) The loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated.~~

~~(C) The loan does not include a prepayment penalty.~~

~~(D) There are no other closing costs associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.~~

~~(e) For a period of one year from the consummation of a consumer loan that was negotiated or arranged by a mortgage broker, that mortgage broker shall not engage in direct marketing or initiate any communication with the borrower regarding refinancing of that consumer loan. "Direct marketing" and "communication" shall include any communication directed at a specific person without the use of intervening media, including, but not limited to, the following methods: telephone, electronic mail, United States mail or other form of courier service, and in-person communication. This subdivision shall not restrict a mortgage broker from responding to specific customer inquiries regarding refinancing.~~

~~(f) A mortgage broker who fails to comply with the provisions of this section shall be civilly liable to the consumer in an amount equal to any actual damages suffered by the consumer, plus attorneys fees and costs. A court may, in addition to any other~~

1 ~~remedy, award punitive damages to the consumer upon a finding~~  
2 ~~that damages are warranted pursuant to Section 3294 of the Civil~~  
3 ~~Code.~~

4 ~~(g) The duties, rights, and remedies provided in this section are~~  
5 ~~cumulative and in addition to any other duties, rights, and remedies~~  
6 ~~provided by law.~~

7 ~~SEC. 13.~~

8 *SEC. 4.* No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.